IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELALTE SIDE

WRIT PETITION NO.10434 OF 2004

Laxmibai Arjun Wadkar & Ors. ...Petitioners.

Vs.

Martin Kinny & Ors. ...Respondents.

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Mr.V.T.Lulia for the Petitioners.

Mr.Rajesh Dixit with Mr. V.R.Tripathi for Respondent No.2, 3, 5 to 9.

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CORAM : DR.D.Y.CHANDRACHUD, J.

June 20, 2006.

P.C. :

The Trial Judge in the Court of Small Causes dismissed the Interim Notice taken out by the Petitioners for being brought on record as the Legal Representatives of the deceased Plaintiff, who died during the pendency of the suit. The

Plaintiff instituted a declaratory suit in the Court of Small Causes claiming a declaration as a tenant. Now, it is a settled principle of law that in view of the definition of the expression "legal representative" in Section 2(11) of the Code of Civil Procedure, 1908, a person who in law represents the estate of a deceased person and any person who intermeddles with the estate of the deceased would be a person who would be entitled to be brought on the record upon the death of the litigating party. In **Andhra Bank Ltd. v. R.Srinivasan,** AIR 1962 SC 232, the Supreme Court held that a person who intermedles with a part of the estate is also a legal representative. In a more recent judgment, **Amit Kumar Shaw v. Farida Khatoon**, 2005 (5) ALL M.R. 458, the Supreme Court held that under Order 22 Rule 10 of the Code of Civil Procedure, no detailed inquiry at the stage of granting leave is contemplated. The Court has only to be prima facie satisfied for exercising its discretion in granting leave for continuing the suit by or against the person on whom the interest has devolved by assignment or devolution. The question about the existence and validity of the

assignment or devolution can be considered at the final hearing of the proceedings.

The question threfore, that arises is whether prima facie the Petitioners can demonstrte a case for the exercise of discretion in granting leave. In the present case, the admitted position is that the First Petitioner was working with the deceased as his domestic servant, until his death, on a monthly salary of Rs.500/-. The Second, Third and Fourth Petitioners are sons of the First Petitioner born from the wedlock of the First Petitioner with one Arjun Bhikaji Wadkar who expired. During the course of her cross-examination, the First Petitioner made the following admission:

> "My husband's name was Arjun Bhikaji Wadkar. He died 20 yrs. ago. I am still known as the widow of Arjun Wadkar. I still treat myself as the widow of Arjun Wadkar. I have 1 daughter and 4 sons from Arjun Wadkar. I have no any other issue from any other person. All my four sons recognised them as

> the sons of Arjun Wadkar, in the society. ... I am working with him as domestic servant till his death. I was working at Rs.500/- per month, with him."

The First Petitioner also deposed that she was residing in premises described as Champubai Chawl, Mori Road, Mahim, Mumbai. She stated that her three sons reside with her in the aforesaid premises (though she subsequently sought to change the version). Finally in the course of her cross-examination, the First Petitioner deposed as follows:

> "I was working with him as domestic servant till his death. I was working at Rs.500/- per month with him."

On the face of these admissions, it cannot, even prima facie, be stated that the tenancy right of the deceased have devolved by assignment or devolution on the First Petitioner who was a

servant of the erstwhile Plaintiff and upon Petitioner Nos.2, 3 and 4 who are the sons of the First Petitioner. Reliance is sought to be placed in these proceedings upon the judgment and order of the Additional Chief Metropolitan Magistrate dated 2nd May 2000 in a case involving an offence under Section 324 read with Section 427 of the Penal Code in which the complainant was the Third Petitioner. The conviction in the criminal case has absolutely no bearing on the question as to whether prima facie the Petitioners have established the case that they are entitled to step into the shoes of the deceased Plaintiff by assignment or devolution. In the case of a tenancy governed by the Rent Act, there can be no testamentary disposition and, if at all, a case of devolution has to be established. Having regard to the admissions in the course of the cross-examination, it cannot be held that either the Trial Judge or the Revisional Court were in error. No case for exercise of the supervisory jurisdiction under Article 227 of the Constitution is made out. The Petition is dismissed. No order as to costs.

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